

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0188
Withholding Tax
For the Years 1998-2001

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ISSUE

I. Withholding Tax-Imposition

Authority: IC 6-8.1-5-1(b), IC 6-3-4-8(a).

The taxpayer protests the assessment of withholding tax.

STATEMENT OF FACTS

The taxpayer is a corporation that operated a pharmacy in Indiana. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional withholding tax, interest, and penalty for the years 1998-2001. The taxpayer protested the imposition of withholding tax and a hearing was held. This Letter of Findings results.

I. Withholding Tax-Imposition

DISCUSSION

All tax assessments are presumed to be accurate. The taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b).

The taxpayer was required to withhold employee income taxes and remit those taxes to Indiana pursuant to the provisions of IC 6-3-4-8 (a) in pertinent part as follows:

. . . every employer making payments of wages subject to tax under IC 6-3, regardless of the place where such payment is made, who is required under the provisions of the Internal Revenue Code to withhold, collect, and pay over income tax on wages paid by such employer to such employee, shall, at the time of payment of such wages, deduct and retain therefrom the amount

prescribed in withholding instructions issued by the department. . . Such employer making payments of any wages:

- (1) shall be liable to the state of Indiana for the payment of the tax required to be deducted and withheld . . .
- (2) shall make return of and payment to the department monthly of the amount of tax which under IC 6-3 and IC 6-3.5 he is required to withhold.

The taxpayer offers two explanations for why it did not submit withholding taxes to the state. In its original protest letter, the taxpayer argued that all withholding taxes on taxpayer's pharmacy were remitted to the state through a related business. In support of this contention, the taxpayer submitted documentation indicating that a payroll payment service remitted withholding taxes on employees of the related business. There was, however, nothing to substantiate that the wages were paid, withheld on, and remitted to the state for employees of the taxpayer rather than the related business. This argument is not persuasive.

Alternatively, the taxpayer argues that it had no employees. The taxpayer stated that the president of the company staffed the pharmacy during open hours without taking a salary. This explanation is not rational. The president offered evidence that he drove to Chicago quite frequently to obtain stock for the related business. Therefore, the pharmacy would have had to have been closed during the periods that the corporation president was traveling to Chicago. The argument that the taxpayer had no paid employees is also not persuasive.

FINDING

The taxpayer's protest is denied.